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1 or significant alteration of evidence, or the failure to preserve property for another's use as  
2 evidence, in pending or future litigation.” *Kearney v. Foley & Lardner, LLP*, 590 F.3d 638, 649  
3 (9th Cir. 2009). “This is an objective standard, asking not whether the party in fact reasonably  
4 foresaw litigation, but whether a reasonable party in the same factual circumstances would have  
5 reasonably foreseen litigation.” *Micron Technology, Inc. v. Rambus, Inc.*, 645 F.3d 1311, 1320  
6 (9th Cir. 2011).

### 7 **III. DISCUSSION**

8 Plaintiff's Motion for Sanctions is based on his assertion that even though Vons told the  
9 parties the cart had been preserved, Vons lost or destroyed the scooter. (Mot. Sanctions 9:1–  
10 12). Plaintiff argues that Vons had a duty to preserve the motorized scooter because it knew or  
11 had reason to know that the scooter would be relevant for potential litigation. (*Id.* 12:15–16).  
12 He claims that Vons was on notice of a potential for litigation because he filled out an incident  
13 report. (*Id.* 12:20–13:7). Plaintiff states that he is unsure what happened to the scooter but asks  
14 the Court to impose an adverse inference sanction. (*Id.* 14:1–10).

15 A party's duty to preserve evidence begins when litigation is “pending or reasonably  
16 foreseeable.” *Micron Technology*, 645 F.3d at 1320. The mere existence of a potential claim or  
17 the distant possibility of litigation is not sufficient to trigger a duty to preserve. *Id.* Once a  
18 party is on notice of a potential claim, it is under a duty to preserve evidence which it knows, or  
19 reasonably should know, is relevant to the claim or potential litigation. *In re: Napster, Inc. v.*  
20 *Hummer*, 462 F. Supp. 2d 1060, 1067 (N.D. Cal. 2006).

21 Applying the objective standard, there is no evidence that a reasonable party in the same  
22 factual circumstance would have foreseen litigation. Plaintiff claims that Vons should have  
23 foreseen litigation because he filed an incident report. But the mere fact that an incident report  
24 was filed, without the store being notified of the plaintiff's intent to seek medical treatment, is  
25 not enough to put the store on notice. *See Brown v. Albertsons, LLC*, No. 2:16-cv-01991-JAD-

1 PAL, 2017 WL 1957571, at \*9 (D. Nev. May 11, 2017). The “Customer/Vendor Incident Call  
2 Center Worksheet” and “Customer Report of Incident” describe Plaintiff’s injury as a fall  
3 leading to right knee scratch and cut to his right leg. (Worksheet, Ex. A to Opp., ECF No. 58-  
4 1); (Customer Report, Ex. B to Opp., ECF No. 58-2). Vons asserts that there is no evidence  
5 that medical personnel came to the scene or that Plaintiff advised anyone at Vons that he  
6 intended to seek medical treatment. (Opp. 5:19–22, ECF No. 58).

7 Medical records demonstrate that Plaintiff visited Total Care Family Practice five days  
8 after the fall, but he was seen for a chronic cough and the records contain no mention of the  
9 incident or the cut on Plaintiff’s leg. (*Id.* 5:23–28); (Family Practice Records, Ex. C to Opp.,  
10 ECF No. 58-3). Eleven days after the incident, Plaintiff visited a chiropractor regarding his  
11 fall. (Chiropractic Intake, Ex. D to Opp., ECF No. 58-4). There is no evidence, however, that  
12 Vons was aware he sought medical treatment for the incident. (Opp. 6:1–7). Defendant points  
13 out this timeline because the scooter was repaired three days after Plaintiff’s fall. (Americana  
14 Invoice Electric Cart, Ex. F to Opp., ECF No. 58-6). When the scooter was repaired, there is  
15 no evidence that Vons had knowledge that Plaintiff intended to seek medical treatment, and  
16 Plaintiff did not seek treatment for the fall until eight days after the scooter was repaired.

17 Plaintiff presents no evidence to refute Vons’ position, nor did he file a Reply. Because  
18 the mere existence of a possible claim is not enough, Vons was not under a duty to preserve the  
19 scooter. Plaintiff’s Motion for Sanctions is therefore DENIED.

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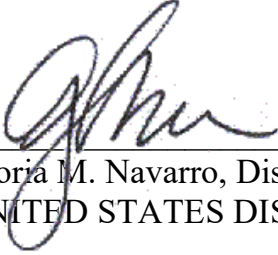
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1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Spoilation Sanctions, (ECF No.  
3 67), is **DENIED**.

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5 **DATED** this 24 day of October, 2024.

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10 Gloria M. Navarro, District Judge  
11 UNITED STATES DISTRICT COURT  
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